

Security Unlimited Enterprises, Inc. and International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600. Case 15-CA-8199

July 29, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND JENKINS

Upon a charge filed on June 8, 1981, by International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600, and duly served on Respondent, Security Unlimited Enterprises, Inc., the General Counsel of the National Labor Relations Board, by the Regional Director for Region 15, issued a complaint and notice of hearing on December 7, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

The complaint alleges that, by virtue of a collective-bargaining agreement between the Employer and the Union, effective from October 1, 1979, until October 1, 1982, the Union has been the exclusive representative of the following employees for the purposes of collective bargaining:

All guards and part-time guard employees employed by the Employer at its Fort Rucker, Alabama, facility; excluding all other employees, office clerical employees, sergeants, lieutenants, captains and all other supervisors as defined in the Act, as amended.

The complaint further alleges that, by virtue of Section 9(a) of the Act, the Union has been, and is now, the exclusive representative of the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

With respect to the unfair labor practices, the complaint alleges in substance that Respondent has repudiated the terms and conditions of its collective-bargaining agreement with the Union and/or unilaterally changed the terms and conditions of employment for the unit employees without prior notice to or consultation with the Union by: (1) since on or about March 17, 1981, failing and refusing to abide by and comply with the agency shop provisions of the collective-bargaining agreement; (2) since on or about December 12, 1980, failing

and refusing to comply with the arbitration provisions of the collective-bargaining agreement; (3) since on or about December 8, 1980, failing and refusing timely to remit previously deducted dues and initiation fees in the manner set forth in the collective-bargaining agreement; (4) since on or about February 1, 1981, failing and refusing to remit to the Union previously deducted dues and initiation fees.

No answer to the complaint having been filed, counsel for the General Counsel, on December 22, 1981,¹ attempted to contact M. Nasif Mahmoud, Respondent's counsel, by telephone. Since Mahmoud was not in the office and had failed to return previous messages, counsel for the General Counsel told Mahmoud's secretary that he would commence summary judgment proceedings if Respondent did not file an answer to the complaint by December 29. To confirm this conversation, counsel for the General Counsel mailed a certified letter, dated December 22, to Mahmoud advising him that the National Labor Relations Board Rules and Regulations require that an answer be filed within 10 days from the service of the complaint. This letter also states:

... your answer to the complaint was due in this office by close of business on December 21, 1981, and that unless you file a legally sufficient answer by close of business on December 29, 1981, I will commence action pursuant to Section 102.50 of the Board's Rules and Regulations to obtain a summary judgment.

No answer has been filed to date.

On January 4, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 15, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the National Labor Relations Board Rules and Regulations, Series 8, as amended,

¹ All dates are in 1981, unless otherwise indicated.

provides, *inter alia*: "All allegations in the complaint, if no answer is filed . . . shall be deemed to be admitted to be true and shall be so found by the Board" As set forth above, Respondent has not filed an answer to the complaint; the time within which to file having passed, we find all allegations in the complaint to be true. There being no issue in dispute, we grant the Motion for Summary Judgment.

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Security Unlimited Enterprises, Inc., is an Illinois corporation which, at all times material herein, was engaged in providing security guard services at the United States Army's Fort Rucker, Alabama, installation, the only facility involved herein. During the 12-month period prior to October 1, 1981, a period representative of all times material herein, Respondent, in the course and conduct of its business operations, purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Alabama.

We find on the basis of the foregoing that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The 8(a)(5) and (1) Violations*

1. The unit

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All guards and part-time guard employees employed by the Employer at its Fort Rucker, Alabama, facility; excluding all other employees, office clerical employees, sergeants, lieutenants, captains and all other supervisors as defined in the Act, as amended.

2. The representative status of the Union

On or about December 4, 1979, Respondent and the Union executed a collective-bargaining agree-

ment, effective October 1, 1979, until October 1, 1982, the terms and conditions of which include the recognition of the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

At all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative for the purposes of collective bargaining of the employees in the unit described above, for the purposes of collective bargaining with respect to rates of pay, wages, hours of work, and other terms and conditions of employment.

B. *The Request and Refusal To Bargain*

In the absence of an answer to the complaint and a response to the Notice To Show Cause, as indicated above, we find that Respondent has failed and refused, and continues to fail and refuse, to bargain collectively with the Union by repudiating the terms and conditions of its collective-bargaining agreement with the Union and/or unilaterally changing the terms and conditions of employment for the unit employees as follows: (1) since on or about March 17, 1981, failing and refusing to abide by and comply with the agency shop provisions of the collective-bargaining agreement; (2) since on or about December 12, 1980, failing and refusing to comply with the arbitration provisions of the collective-bargaining agreement; (3) since on or about December 8, 1980, failing and refusing timely to remit previously deducted dues and initiation fees in the manner set forth in the collective-bargaining agreement; (4) since on or about February 1, 1981, failing and refusing to remit to the Union previously deducted dues and initiation fees. Accordingly, by the acts and conduct described above, and by each of said acts and conduct, Respondent has failed and refused and is failing and refusing to bargain collectively and in good faith with the Union and has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

By the acts and conduct described above, and by each of said acts and conduct, Respondent interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and we find that Respondent did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has failed and refused to bargain collectively in good faith with the Union by repudiating the collective-bargaining agreement; by unilaterally changing the terms and conditions of employment of the employees in the appropriate unit without prior notice to the Union; by failing and refusing to comply with the agency shop provisions of the agreement and to remit union initiation fees and dues to the Union; and by failing and refusing to comply with the arbitration provisions of the agreement; we shall order, *inter alia*, that Respondent comply with the provisions of the collective-bargaining agreement entered into by it on or about December 4, 1979, to honor its agreement in all its terms and to bargain collectively in good faith with the Union. In so doing, Respondent shall remit all moneys previously deducted but not remitted to the Union.

CONCLUSIONS OF LAW

1. Security Unlimited Enterprises, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600, is a labor organization within the meaning of Section 2(5) of the Act.

3. All guards and part-time guard employees employed by the Employer at its Fort Rucker, Alabama, facility; excluding all other employees, office clerical employees, sergeants, lieutenants, captains and all other supervisors as defined in the Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein the Union has been, and now is, the exclusive representative of the employees in the unit described above for the

purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By repudiating the collective-bargaining agreement and unilaterally changing the terms and conditions of employment for unit employees Respondent has violated Section 8(a)(5) and (1) of the Act.

6. By failing and refusing timely to remit initiation fees and dues Respondent has violated Section 8(a)(5) and (1) of the Act.

7. By refusing to abide by and to comply with the agency shop and arbitration provisions of the collective-bargaining agreement, Respondent has violated Section 8(a)(5) and (1) of the Act.

8. By the acts described in section III, above, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, its employees in the exercise of rights guaranteed in Section 7 of the Act and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Security Unlimited Enterprises, Inc., Fort Rucker, Alabama, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain collectively with International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600, by repudiating and unilaterally changing the terms and conditions of employees in the following appropriate unit:

All guards and part-time guard employees employed by the Employer at its Fort Rucker, Alabama, facility; excluding all other employees, office clerical employees, sergeants, lieutenants, captains and all other supervisors as defined in the Act, as amended.

(b) Failing and refusing timely to remit to the Union all initiation fees and dues from employees in the unit.

(c) Failing and refusing to abide by and to comply with the terms and provisions of the collective-bargaining agreement relating to agency shop and arbitration.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit and honor, abide by, and comply with all terms and conditions including those related to agency shop and arbitration in the agreement executed by the parties on December 4, 1979.

(b) As required by the agreement, remit to the Union previously deducted initiation fees and dues and make whole the above-named Union for any moneys due under the terms of the collective-bargaining agreement, but which were not remitted to the Union as a result of Respondent's failure to apply the terms of the collective-bargaining agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of payments due to the Union, and the amount of dues deduction from the earnings of said employees, as required by the collective-bargaining agreement.

(d) Post at its Fort Rucker, Alabama, place of business copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Plant Guard Workers of America (UPGWA), and its Local Union No. 600, as the exclusive representative of the employees in the bargaining unit described below:

All guards and part-time guard employees employed by the Employer at its Fort Rucker, Alabama, facility; excluding all other employees, office clerical employees, sergeants, lieutenants, captains and all other supervisors as defined in the Act, as amended.

WE WILL NOT refuse to recognize or deal with the above-named Union, as the exclusive bargaining representative of the employees in the bargaining unit described above, by repudiating or unilaterally changing the terms of the collective-bargaining agreement executed by us on December 4, 1979, with said Union.

WE WILL NOT fail timely to remit initiation fees and dues as required by our collective-bargaining agreement.

WE WILL NOT refuse to abide by or refuse to comply with the agency shop or arbitration provisions of the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain with the above-named Union as the exclusive bargaining representative of our employees in the appropriate unit.

WE WILL remit to the Union previously deducted initiation fees and dues as required by our collective-bargaining agreement.

WE WILL abide by and comply with the agency shop and arbitration provisions and other terms of the collective-bargaining agreement.

WE WILL make whole the above-named Union for any moneys due it under the agency shop provisions of the collective-bargaining agreement but which were not transmitted to the Union as a result of our failure to comply

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

with the terms of the collective-bargaining agreement.

SECURITY UNLIMITED ENTERPRISES,
INC.